

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

VALERIE VERTZ,)	Case No. RIF-02-0033
)	
Appellant,)	FINDINGS OF FACT, CONCLUSIONS OF
)	LAW AND ORDER OF THE BOARD
v.)	
)	
DEPARTMENT OF SOCIAL AND HEALTH)	
SERVICES,)	
)	
Respondent.)	

I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair, and GERALD L. MORGEN, Vice Chair. The hearing was held in the Personnel Appeals Board Hearing Room, 2828 Capitol Boulevard, Olympia, Washington, on September 25, 2003.

1.2 **Appearances.** Valerie Vertz appeared *pro se*. Paige Dietrich, Assistant Attorney General, represented Respondent Department of Social and Health Services.

1.3 **Nature of Appeal.** This is an appeal of a reduction in force due to a lack of funds.

II. FINDINGS OF FACT

2.1 Appellant Valerie Vertz was a Policy Planning Program manager (Washington Management Service position) and permanent employee for Respondent Department of Social and Health Services in the Economic Services Administration, Division of Employment and Assistance

1 Program (DEAP). Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the
2 rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the
3 Personnel Appeals Board on November 18, 2002.

4
5 2.2 In June 2002, Roxie Schalliol, Acting Director for the Division of Employment and
6 Assistance Programs, began budget and staffing plans for Fiscal Year (FY) 2003. The Economic
7 Services Administration (ESA) was looking at a reduction of at least 194 fulltime equivalents
8 (FTEs) and a budget reduction of approximately \$14 million. Of the FTE reductions, DEAP was
9 earmarked to assume a reduction of approximately 14 FTEs. Ms. Schalliol met with the DEAP
10 Management Team to discuss the reduction plans, review critical functions, and existing vacancies.
11 Ms. Schalliol's goal was to also reduce the management structure in the division.

12
13 2.3 By July 2002, ESA's budget was reduced by approximately \$1.9 million. After reviewing
14 areas where savings and reductions could be made to minimize the impact on staff, including
15 reductions in postage and telephone costs, ESA still faced a shortfall of approximately \$800,000,
16 which spread across all divisions within ESA. DEAP's portion equaled approximately \$134,000 in
17 state funds. Ms. Schalliol concluded that a reduction of approximately 20 staff would be necessary
18 in DEAP. Prior to finalizing the positions to be RIF'd, Ms. Schalliol asked staff to consider early
19 retirement and using leave without pay in lieu of having their positions eliminated and to notify her
20 by July 12, 2002.

21
22
23 2.4 Respondent has adopted a reduction in force policy. The policy sets forth the layoff unit for
24 WMS positions, requires the appointing authority to advise the affected employee of the intent to
25
26

1 eliminate his/her position, determine the RIF options and send written notification to the affected
2 employee. The procedure for determining RIF options is as follows:

3
4 Beginning with the current management band, options will be offered based on
seniority and will be identified and offered sequentially as follows:

5 1) A vacant position within the current layoff unit that is at the employee's
6 current salary standard for which the employee has the applicable personal work
7 history and the required job skills. If no option is found in the current layoff unit,
the search will expand until all layoff units are exhausted.

8 b) If no options under (1) above, a WGS [Washington general service] position
9 that is, within the current layoff unit, in the same occupational field as the WMS
10 position, in a class in which the employee has previously held permanent status
and is qualified for as determined by the RIF Coordinator/designee and at the
employee's same/similar. ...

11
12
13 2.5 On July 22, 2002, Ms. Schalliol identified eight positions for reduction in force due to lack
14 of funds. Appellant's position was selected for elimination. As a result, Appellant was asked to
15 submit an updated resume and state application

16 2.6 Randi Burk, DSHS RIF Coordinator, reviewed Appellant's employment history to determine
17 Appellant's layoff options. Based on Appellant's education, work history and experience, Ms. Burk
18 reviewed occupational codes 180, 350, 600 and 800. Ms. Burk issued notice to all DSHS Assistant
19 Secretaries informing them of the need to RIF a WMS employee. She attached list of potential
20 position options identified within each of the administrations, Appellant's job application and job
21 description. Ms. Burk asked each Assistant Secretary to review the options listed and determine
22 whether Appellant qualified for any of the positions identified. The Assistant Secretaries, or their
23 designees, determined whether Appellant met the minimum requirements of the position(s). That
24 information was then forwarded to Ms. Burk.
25
26

1 2.7 By letter dated October 25, 2002, Roxie Schalliol, the appointing authority, informed
2 Appellant that her Washington Management Service position as a Policy Planning Program
3 Manager was “being reduced in force.” Ms. Schalliol wrote that the action was necessary due to a
4 lack of funds and would become effective at the close of the work shift on November 9, 2002. Ms.
5 Schalliol provided Appellant with three employment options.

6
7 2.8 On November 1, 2002, the options were amended and Appellant was offered a new formal
8 RIF option as a Prescription Drug Program Manager within the Medical Assistance administration,
9 Division of Medical Management in Thurston County. The notice to Appellant indicated that the
10 position had been determined appropriate for reallocation to Washington General Service (WGS) by
11 the Joint Legislative Audit and Review Committee but that the appropriate WGS classification had
12 not been determined. Appellant subsequently accepted the option, which was at a lower salary
13 standard. However, Appellant was “y-rated” and she did not suffer a loss in pay.

14 15 **III. ARGUMENTS OF THE PARTIES**

16 3.1 Respondent asserts that the RIF occurred as a result of a lack of funds and that Ms. Schalliol
17 used her discretion to prioritize and determine which positions to eliminate. Respondent also
18 asserts that Appellant was provided with the appropriate RIF options. Respondent contends that the
19 decision to eliminate some positions did not prevent the department from making other necessary
20 hiring, promotional and salary increases. Respondent argues that it complied with the rules and that
21 the RIF should be upheld.

22
23 3.2 Appellant argues that the department continued to hire, promote and approve salary
24 increases despite the mandate to reduce expenditures within the department. Appellant argues that
25 the department’s cuts were not fair or equitable and that fewer employees would have been laid off
26

1 if others had not been given salary increases. Appellant asserts that she was not offered positions
2 for which she was qualified and that the position she was offered was in the process of being
3 transferred to the Washington general service. Appellant asserts that her RIF into that position
4 adversely affected her retirement, her eligibility to receive pay increases and her promotional
5 possibilities.

7 IV. CONCLUSIONS OF LAW

8 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
9 herein.

10
11 4.2 In an appeal of a reduction-in-force, Respondent has the burden of proof. WAC 358-30-
12 170. Respondent has the burden of proving by a preponderance of the credible evidence that it laid
13 the employee off for the reason stated in the RIF letter. O’Gorman v. Central Washington
14 University, PAB No. L93-018 (1995).

15
16
17 4.3 We continue to hold that management has discretion in determining which positions to
18 eliminate and which budgets to reduce when faced with a demonstrated lack of funds. In instituting
19 a RIF for lack of funds, agencies have discretion to determine in good faith which positions to
20 eliminate. Van Jepmond v. Employment Security Dep’t, PAB No. L86-15 (1988), aff’d Thurston
21 Co. Super. Ct. No. 88-2-00274-3 (1989). In Wilkes v. Centralia College, PAB No. 3678-L2
22 (1994), the Board reversed the hearings examiner and held that Respondent had sustained that there
23 was a lack of funds and that the decision as to where to make budget cuts was the responsibility of
24 the Respondent. In Cowden v. University of Washington, PAB No. L93-038 (1994) (Condon,
25
26

1 Hrgs, Exam.), the Board held that it could not second-guess management decisions with respect to a
2 layoff when there is a documented lack of funds.

3
4 4.4 The issue here is whether Respondent complied with WAC 356-56-550(1) when it laid off
5 Appellant because of a lack of funds. WAC 356-56-550, which governs reduction in force
6 procedures for WMS employees, indicates as follows:

7 (1) Washington management service employees may be separated due to
8 reduction in force in accordance with the statutes and the agency's reduction in
9 force procedures after at least fifteen calendar days' notice in writing, without
10 prejudice, because of lack of funds. . .

11 4.5 The budget information admitted into evidence supports by a preponderance of the evidence
12 that a lack of funds existed and that Appellant's reduction in force was necessitated because of a
13 lack of funds. Respondent has met its burden of proof that the elimination of Appellant's position
14 complied with the requirements of WAC 356-56-550.

15
16 4.6 The second issue presented is whether Respondent provided Appellant with appropriate
17 layoff options. WAC 356-56-550, subsection (3) indicates:

18
19 Each agency shall develop a reduction in force procedure that is consistent with
20 the following:

21

22 (i) Appointing authorities will seek within the agency a funded vacant
23 Washington management service position for which the employee has the
24 required job skills, and that is at the same salary standard and/or same evaluation
25 points.

26 . . . The appointing authority will first look within the current management band
for equivalent funded positions at the same salary standard and/or the same
evaluation points, and if none are found, then progressively to positions with a
lower salary standard . . .

1
2 4.7 During the RIF process, a WMS position as a Prescription Drug Program Manager was
3 eventually identified as a viable option and was ultimately offered to Appellant. In the case here,
4 there was sufficient evidence to establish that Respondent correctly determined Appellant's layoff
5 option as required by WAC 356-56-550. Appellant challenges the decision to offer her a position
6 that was slated for placement back to Washington general service. Decisions about whether a
7 position is included in Washington management service may be reviewed by the director of the
8 Department of Personnel at the employee's request (WAC 356-56-610).

9
10 4.8 Respondent has met its burden of proof, and the appeal of Valerie Vertz should be denied.

11
12 **V. ORDER**

13 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Valerie Vertz is denied.

14 DATED this _____ day of _____, 2003.

15
16 WASHINGTON STATE PERSONNEL APPEALS BOARD

17
18 _____
19 Walter T. Hubbard, Chair

20 _____
21 Gerald L. Morgen, Vice Chair